# City of Lafayette Staff Report

**To:** City Council

**From:** Mike Moran, Associate Engineer

**Date Written:** August 28, 2008

**Meeting Date:** September 8, 2008

**Subject:** 3454 Hamlin Road – Request for sidewalk, fencing, landscaping, and irrigation encroachment into the City's right-of-way along the frontage.

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## Introduction

The Roman Catholic Bishop Oakland owns the property at 3454 Hamlin Road and is requesting permission to add sidewalk, a split rail fence, landscaping, and irrigation at the frontage of the property along Hamlin Road. These additions will require an encroachment agreement because the improvements will be added to the public right-of-way. Staff recommends approval of the agreement.

## Discussion

Each day several classes of elementary children from the St. Perpetua School (across from subject property and also owned by the Roman Catholic Bishop Oakland) cross Hamlin Road. The children walk along a narrow sidewalk in front of the property at 3454 Hamlin. To create a safer environment for these young pedestrians, the property owner would like to widen the existing segment of sidewalk that fronts 3454 Hamlin and install a cedar split rail fence with vine planting, and irrigation. The fencing, which is modeled after the one constructed as part of the City's Moraga Road Corridor project would act as both a physical and visual barrier between the pedestrians and street traffic.

The scope of work is shown on attached Figures 1-3 and includes:

1. Removal, replacement, and widening of the existing sidewalk on the north side of Hamlin Road between the crosswalk and the upper parking lot entrance (Figure 1 and Figure 2).
2. Construction of a cedar split rail fence along the sidewalk modeled after the fence used in the Moraga Road Corridor project (Figure 2 and Figure 3).

3. Installing irrigation and landscaping along the fence line (Figure 3).

Staff solicited project input from the Ad-Hoc CIP Review Committee comprised of representatives from both the city's Planning and Design Review Commissions. After design clarifications, all committee members expressed support of the project. Staff believes the project provides benefits in public safety as well as a visual improvement for the neighborhood. The property owners understand that they are responsible for removing the encroachment improvements if the City deems necessary in the future. Based on these considerations, staff recommends approval of this encroachment with the following conditions:

1. All maintenance of the sidewalk, fence, landscape, and irrigation will be the responsibility of the property owner.

2. Property owner provides insurance and accepts liability and responsibility for the design, installation, and ongoing operation of these facilities.

3. The City will reserve the right, if necessary, to require relocation or removal of the improvements located within the City right of way at the owner's expense in the future.

## Fiscal Impact

None

## Recommendation

Approve the encroachment into the City right of way along the property frontage of 3454 Hamlin Road and authorize the Mayor to execute an encroachment agreement with the applicant.

Attachment: Encroachment Agreement for 3454 Hamlin Road

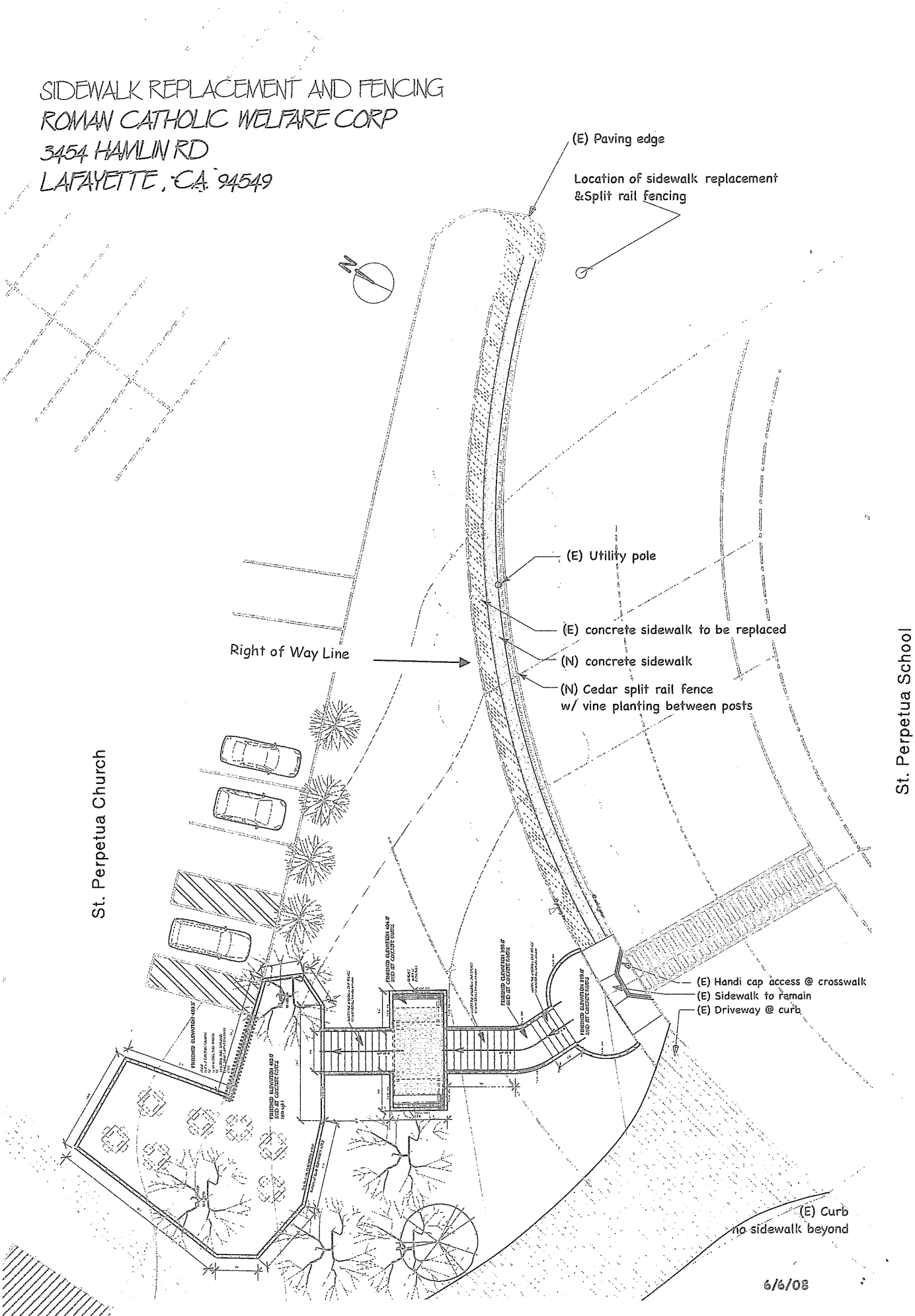



Figure 1: Plan View of Sidewalk Replacement and Fencing

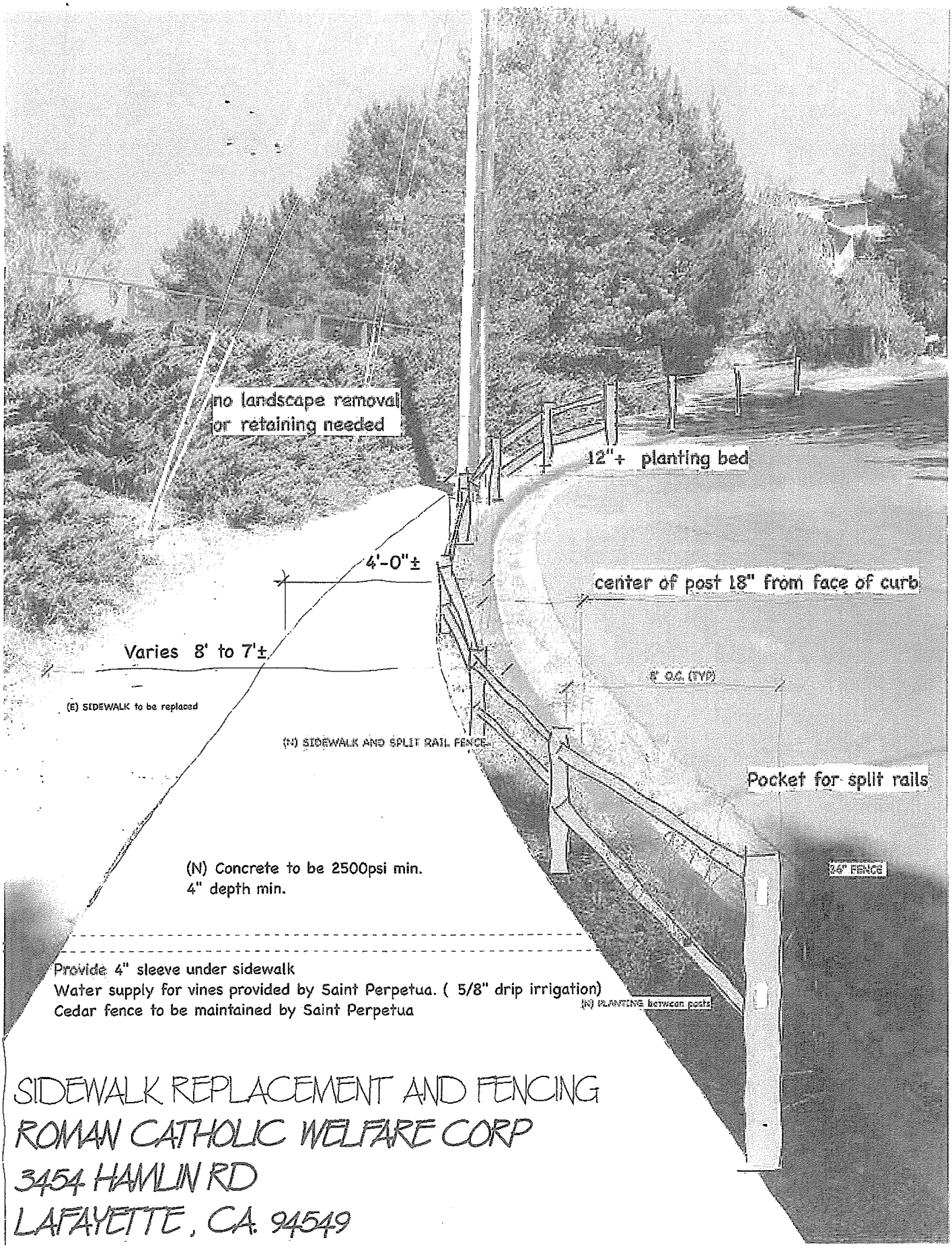
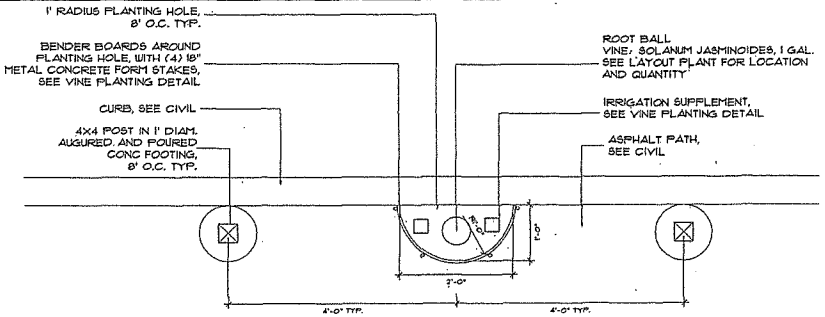
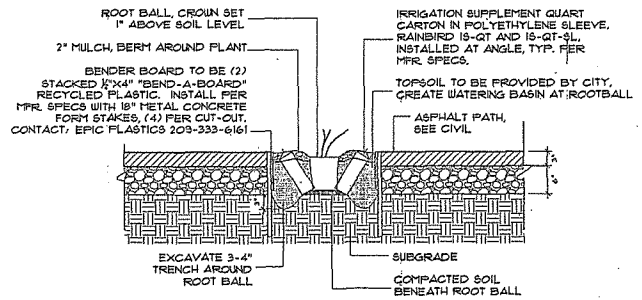

no landscape removal
or retaining needed
12"+ planting bed
4'-0"±
center of post 18" from face of curb
Varies 8' to 7'±
(E) SIDEWALK to be replaced
(N) SIDEWALK AND SPLIT RAIL FENCE
Pocket for split rails
(N) Concrete to be 2500psi min.
4" depth min.
36" FENCE
Provide 4" sleeve under sidewalk
Water supply for vines provided by Saint Perpetua. ( 5/8" drip irrigation)
Cedar fence to be maintained by Saint Perpetua
SIDEWALK REPLACEMENT AND FENCING
ROMAN CATHOLIC WELFARE CORP
3454 HAMLIN RD
LAFAYETTE, CA. 94549

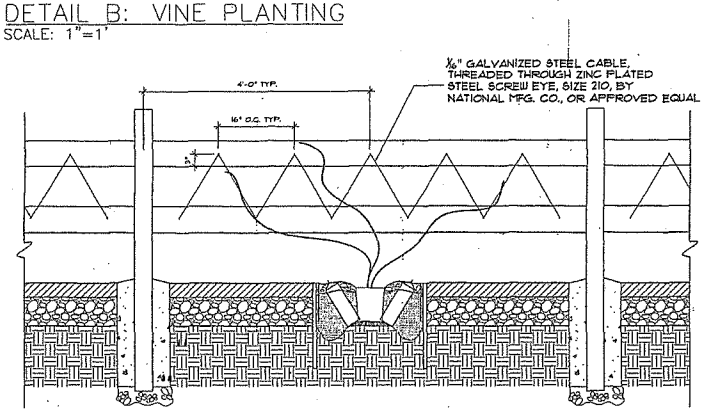
Figure 2: Sketch of Proposed Split Rail Fence and Sidewalk


1' RADIUS PLANTING HOLE, 8' O.C. TYP.
BENDER BOARDS AROUND PLANTING HOLE, WITH (4) 18" METAL CONCRETE FORM STAKES, SEE VINE PLANTING DETAIL
CURB, SEE CIVIL
4X4 POST IN 1' DIAM. AUGURED, AND POURED CONC FOOTING, 8' O.C. TYP.
ROOT BALL
VINE; SOLANUM JASMINOIDES, 1 GAL. SEE LAYOUT PLANT FOR LOCATION AND QUANTITY
IRRIGATION SUPPLEMENT, SEE VINE PLANTING DETAIL
ASPHALT PATH, SEE CIVIL
1'-0"
2'-0"
4'-0" TYP.
4'-0" TYP.

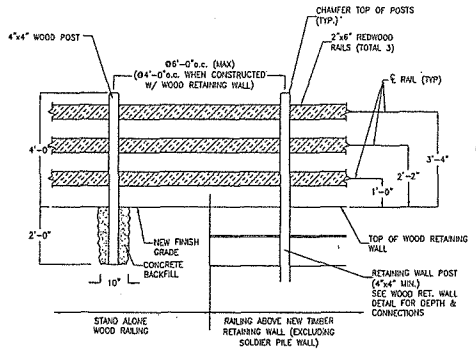
## DETAIL A: VINE CUT-OUT
SCALE: 1"=1'


ROOT BALL, CROWN SET 1" ABOVE SOIL LEVEL
2" MULCH, BERM AROUND PLANT
BENDER BOARD TO BE (2) STACKED ½"X4" "BEND-A-BOARD" RECYCLED PLASTIC. INSTALL PER MFR. SPECS WITH 18" METAL CONCRETE FORM STAKES, (4) PER CUT-OUT. CONTACT: EPIC PLASTICS 209-333-6161
IRRIGATION SUPPLEMENT QUART CARTON IN POLYETHYLENE SLEEVE, RAINBIRD 15-QT AND 15-QT-SL, INSTALLED AT ANGLE, TYP. PER MFR. SPECS.
TOPSOIL TO BE PROVIDED BY CITY, CREATE WATERING BASIN AT ROOTBALL
ASPHALT PATH, SEE CIVIL
EXCAVATE 3-4" TRENCH AROUND ROOT BALL
SUBGRADE
COMPACTED SOIL BENEATH ROOT BALL

## DETAIL B: VINE PLANTING
SCALE: 1"=1'

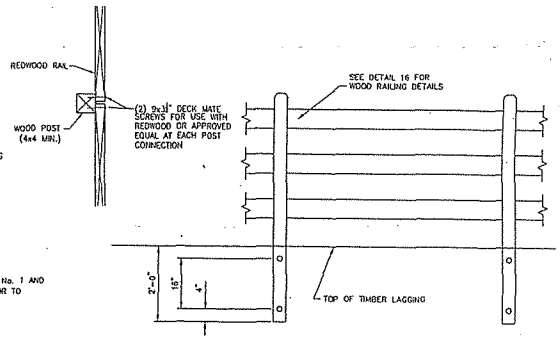

4'-0" TYP.
16" O.C. TYP.
⅛" GALVANIZED STEEL CABLE, THREADED THROUGH ZINC PLATED STEEL SCREW EYE, SIZE 210, BY NATIONAL MFG. CO., OR APPROVED EQUAL

## DETAIL C: VINE SUPPORT
SCALE: 1"=1'

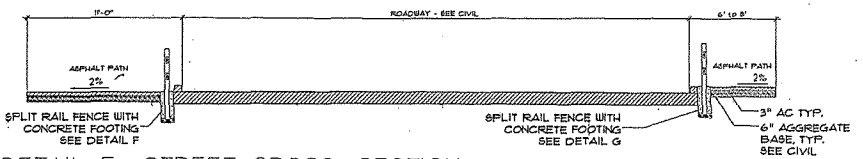

4"x4" WOOD POST
CHAMFER TOP OF POSTS (TYP.)
2"x6" REDWOOD RAILS (TOTAL 3)
Ø6'-0"o.c. (MAX) (Ø4'-0"o.c. WHEN CONSTRUCTED W/ WOOD RETAINING WALL)
℄ RAIL (TYP)
4'-0"
2'-0"
3'-4"
2'-2"
1'-0"
NEW FINISH GRADE
CONCRETE BACKFILL
10"
TOP OF WOOD RETAINING WALL
RETAINING WALL POST (4"x4" MIN.) SEE WOOD RET. WALL DETAIL FOR DEPTH & CONNECTIONS
STAND ALONE WOOD RAILING
RAILING ABOVE NEW TIMBER RETAINING WALL (EXCLUDING SOLDIER PILE WALL)

NOTE: ALL WOOD FENCE AND RAILING COMPONENETS SHALL BE REDWOOD No. 1 AND TREATED WITH "CABOTS CLEAR SOLUTION" CLEAR WATERSEALER PRIOR TO FABRICATION

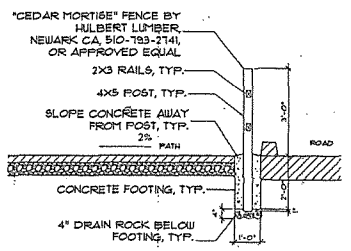
16 WOOD RAILING & WOOD FENCE
NOT TO SCALE


REDWOOD RAIL
WOOD POST (4x4 MIN.)
(2) 2x3½" DECK MATE SCREWS FOR USE WITH REDWOOD OR APPROVED EQUAL AT EACH POST CONNECTION
SEE DETAIL 16 FOR WOOD RAILING DETAILS
2'-0"
18"
4"
TOP OF TIMBER LAGGING

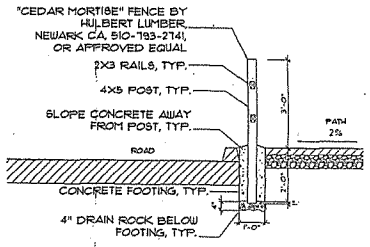
RAILING CONNECTION DETAIL
NO SCALE




## DETAIL E: STREET CROSS-SECTION
SCALE: 1/4"=1'




## DETAIL F: FENCE DETAIL
SCALE: 1/2"=1'




## DETAIL G: FENCE DETAIL
SCALE: 1/2"=1'

02/16/05

| DATE | MARK | REVISION | INIT. |
|---|---|---|---|

Designed by: JH/CD
Drawn by: JH/CD
Checked by: JH
Reviewed by: SS
Date: February 2005

Sign_____ Date_____

WOLFE MASON ASSOCIATES
LANDSCAPE ARCHITECTS RESTORATION SPECIALISTS
1672 Shattuck Avenue Oakland, CA 94609
Phone 510.594.8150 Fax 510.594.8165
wolfemason.com

LAFAYETTE

REVIEWED BY:
CITY OF LAFAYETTE
Tony Coe, Engineering Services Manager Date

CITY OF LAFAYETTE
PROJECT NO. 014-9653
MORAGA ROAD CORRIDOR IMPROVEMENTS PROJECT
CONTRA COSTA COUNTY CALIFORNIA

MORAGA ROAD
FENCE DETAILS
PLAN / PROFILE
SCALE: _____ SHEET LS-1 No. 40 of 44

Figure 3: Fence and Planting Details

When Recorded Return To: )
)
City Clerk )
City of Lafayette )
3675 Mt. Diablo Blvd., Suite 210 )
Lafayette, CA 94549 )

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AGREEMENT

Encroachment of sidewalk, fencing, landscaping, and irrigation within a Public Right-of-Way along Hamlin Road at 3454 Hamlin Road.

This Agreement is entered into on September 8, 2008 between the Roman Catholic Bishop Oakland "Property Owner" and the City of Lafayette, a municipal corporation "City".

RECITALS

This agreement is predicated upon the following facts:

A. Property Owner owns the residential property located at 3454 Hamlin Road Lafayette, California, APN 239 070 030 ("the Property"). The Property is more particularly described in Exhibit "A".

B. Property Owner seeks an encroachment permit to install sidewalk, split rail fencing, landscaping, and irrigation which will encroach into the public right-of-way along 3454 Hamlin Road. In connection with this request for an encroachment permit, Property Owner has submitted plans to the City for the construction and the placement of the split rail fence, sidewalk, landscaping, and irrigation (Figures 1-3).

C. City is willing to grant Property Owner an encroachment permit in consideration of Property Owner agreeing to the terms and conditions hereafter set forth.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Permitted Encroachment of the sidewalk, split rail fencing, landscaping, and irrigation

Property Owner is permitted to place sidewalk, split rail fencing, landscaping, and irrigation which substantially conforms to the plans submitted to the City described in paragraph B above, to encroach into the public right-of-way along 3454 Hamlin Road, and shall obtain any building permit which may otherwise be required by the Uniform Building Code.

This encroachment permit is not a building permit and does not grant permission to construct the plan without a separate building permit, if required by the Uniform Building Code adopted by reference by the Lafayette Municipal Code.

2. Risk of Damage and Indemnification.

Property Owner assumes all risk of damage to land and improvements owned by Property Owner, and all risk of other damage to the City or a third party alleged to be caused or contributed to by the placement, permitting or maintenance of the split rail fence, sidewalk, fencing, landscaping, and/or irrigation within the right-of-way as installed and maintained by the Property Owner. Property Owner also assumes the risk of damage to the sidewalk, fencing, landscaping, and irrigation installed in the right-of-way.

If the City, its officers, agents or employees are named in any action for damages or inverse condemnation in which it is alleged that the sidewalk, fencing, landscaping, or irrigation, permitted as a result of the issuance of the encroachment permit by the City is the cause of injury to persons or property or the cause of the " taking" of property, Property Owner shall defend, indemnify and hold harmless the City, its officers, agents and employees from damages, claims of damage or the amount of a " taking " including reasonable attorney's fees costs, alleged to have resulted from the location of the sidewalk, fencing, landscaping, and/or irrigation within the right-of-way area by the issuance of the encroachment permit.

3. Insurance.

Property Owner acknowledges s/he maintain homeowners insurance and property damage insurance in the amount of at least $300,000 per occurrence covering the encroachment, insuring against liability for damage to property and for injury to or death of any person as a result of the placement or condition of the split rail fence, sidewalk, landscaping, and irrigation. Property Owner shall furnish the City with satisfactory evidence of the insurance and evidence that the carrier is required to give the City at least 10 days notice in advance of the cancellation or reduction in coverage of the policy.

4. Warranty.

Property Owner warrants that as of the date of this Agreement, they are the lawful owners in fee simple of the Property described in Exhibit "A".

5. Duty to Maintain

Property Owner is responsible for maintaining the split rail fence, sidewalk, landscaping, and irrigation described in Paragraph 1. Property Owner shall maintain the split rail fence, sidewalk, landscaping, and irrigation in a safe and attractive condition as an encroachment within the City's right-of-way area. The split rail fence, sidewalk, landscaping, and irrigation may not be modified or otherwise redesigned and reconstructed without prior City approval.

6. City May Maintain or Remove.

If Property Owner fails to meet the standard necessary to maintain the split rail fence, sidewalk, landscaping, and irrigation, the City may give written notice of the deficiency to Property Owner who shall have 20 days to make necessary correction, unless the deficiency is deemed by the City to impair sight distance of adjacent vehicular traffic, in which case the correction shall be made immediately. If the correction is not made within time allowed under this paragraph, the City may elect to take the steps necessary to maintain the split rail fence, sidewalk, landscaping, and irrigation, or remove the encroachment entirely. To do this, the City shall serve a notice of its intent for this purpose. The City shall either personally serve the notice upon Property Owner or mail a copy of it by certified mail at Property Owners last known address or as shown on the tax rolls at least 15 days in advance of the date when it intends to take steps to maintain or remove the split rail fence,

sidewalk, landscaping, and irrigation, however, if the City deems the maintenance or removal to be necessary in order to correct a sight distance deficiency for adjacent vehicular traffic, it shall only be required to take reasonable steps to so notify Property Owners 24 hours in advance of the date it intends to perform the maintenance or removal. For this purpose, the City may perform such work, as it considers reasonably necessary and proper to restore and maintain or remove the encroachment. The City may act either through its own employees or through an independent contractor.

7. City's Costs of Maintenance or Removal a Lien.

If the City incurs costs in maintaining or removing the split rail fence, sidewalk, landscaping, and irrigation which encroach after following the procedure set forth in paragraph 6, the City shall make demand upon Property Owner for payment. If Property Owner fails to pay the costs incurred by the City within 30 days of the date demand is made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 10 percent a year until paid.

8. Additional Remedies.

The City may as an alternative to the lien procedure set forth in Paragraph 7 bring legal action to collect the sums due as the result of the making of expenditures for restoration and maintenance or removal of the split rail fence, sidewalk, landscaping, and irrigation. Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, Property Owner is responsible for payment to the City of a reasonable sum as attorneys' fees and court costs, together with interest from the date which is 30 days after the City has given its notice under paragraph 7.

9. Revocation.

City may revoke the encroachment permit at any time by 1) giving Property Owners 30 days prior written notice of the intention to revoke and 2) a majority vote of City Council to revoke the permit for any public purpose. In the event of revocation, within 60 days of the date of notice of Council's decision to revoke the permit, Property Owners agree to remove at their expense the split rail fence, sidewalk, landscaping, and irrigation described in paragraph 1, which encroaches in the right-of-way area.

10. Notices.

Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed:

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

Notices to Property Owner shall be addressed:

Roman Catholic Bishop Oakland
3454 Hamlin Road
Lafayette, CA 94549

When the Property Owner cease to be the owners they shall file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so the subsequent grantee is charged with the obligation under this Agreement.

11. Miscellaneous Terms and Provisions.

(a) If any provision of this Agreement is adjudged invalid, the remaining provisions of it are not affected.

(b) Notice to Property Owners shall be considered to have been given to each party when sent to the address above stated.

(c) This writing, together with the encroachment permit and related documents is the full, final and exclusive statement of the Agreement of the parties.

(d) Property Owner appoints City its attorney-in-fact to do all acts and things that the City considers necessary to restore or maintain the sidewalk, fencing, landscaping, and/or irrigation.

(e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.

(f) The obligations upon the parties signing this Agreement terminate personally as to them when they convey their interest in the property and file for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner takes title subject to the requirements of this Agreement.

12. Agreement Attaches To Land.

This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETTE

_____
Mike Anderson, Mayor

PROPERTY OWNER(S)

John Kasper
_____
Father John Kasper
Roman Catholic Bishop Oakland

_____
* Notarial Acknowledgment Required.

ATTEST:

_____
Joanne Robbins, City Clerk

## LEGAL DESCRIPTION

## EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LAFAYETTE, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel C, as shown on the map of MSL 2-73, filed on May 21, 1975, in Book 37 of Parcel Maps, page 49, Contra Costa County Records.

APN: 239-070-030

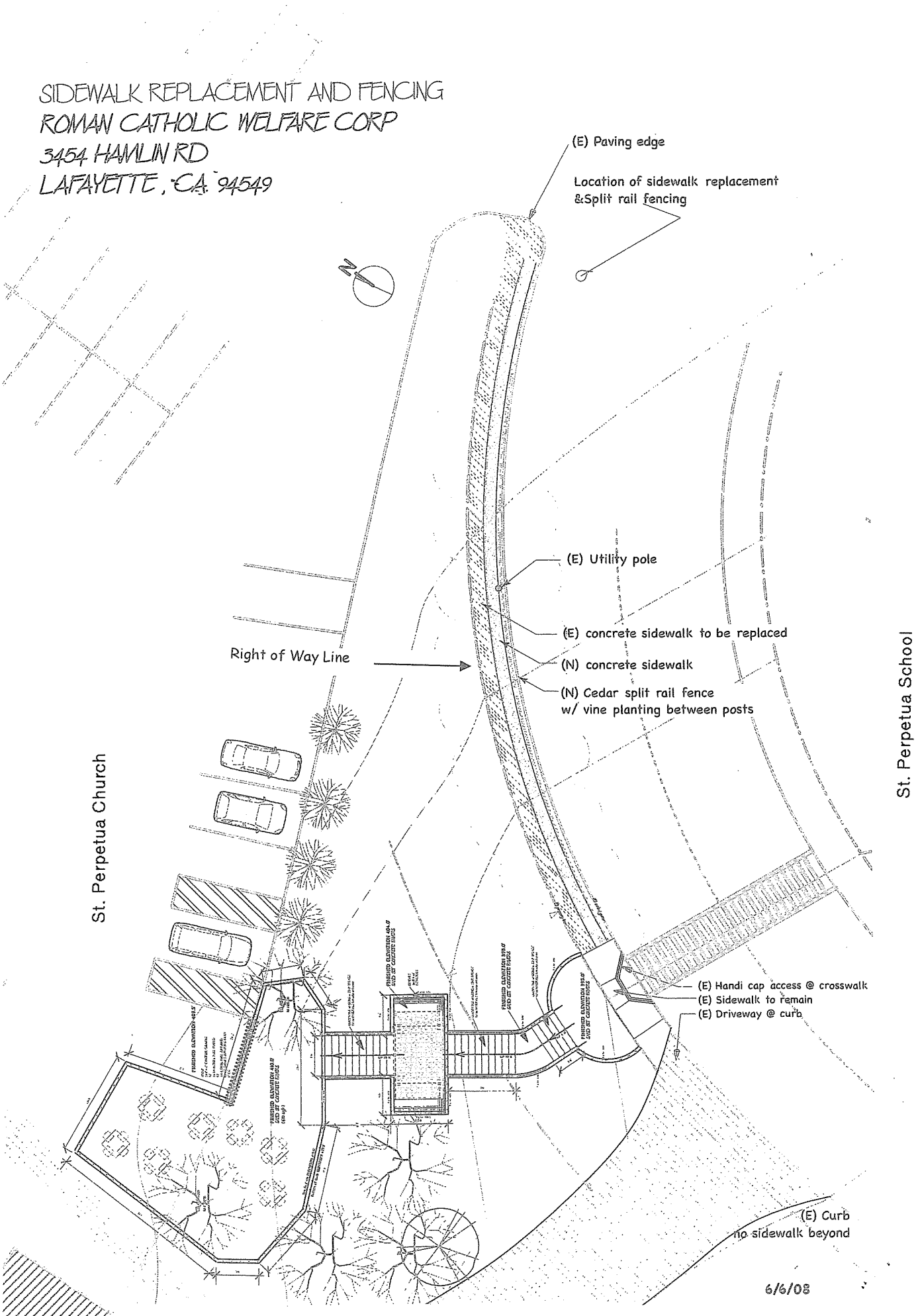
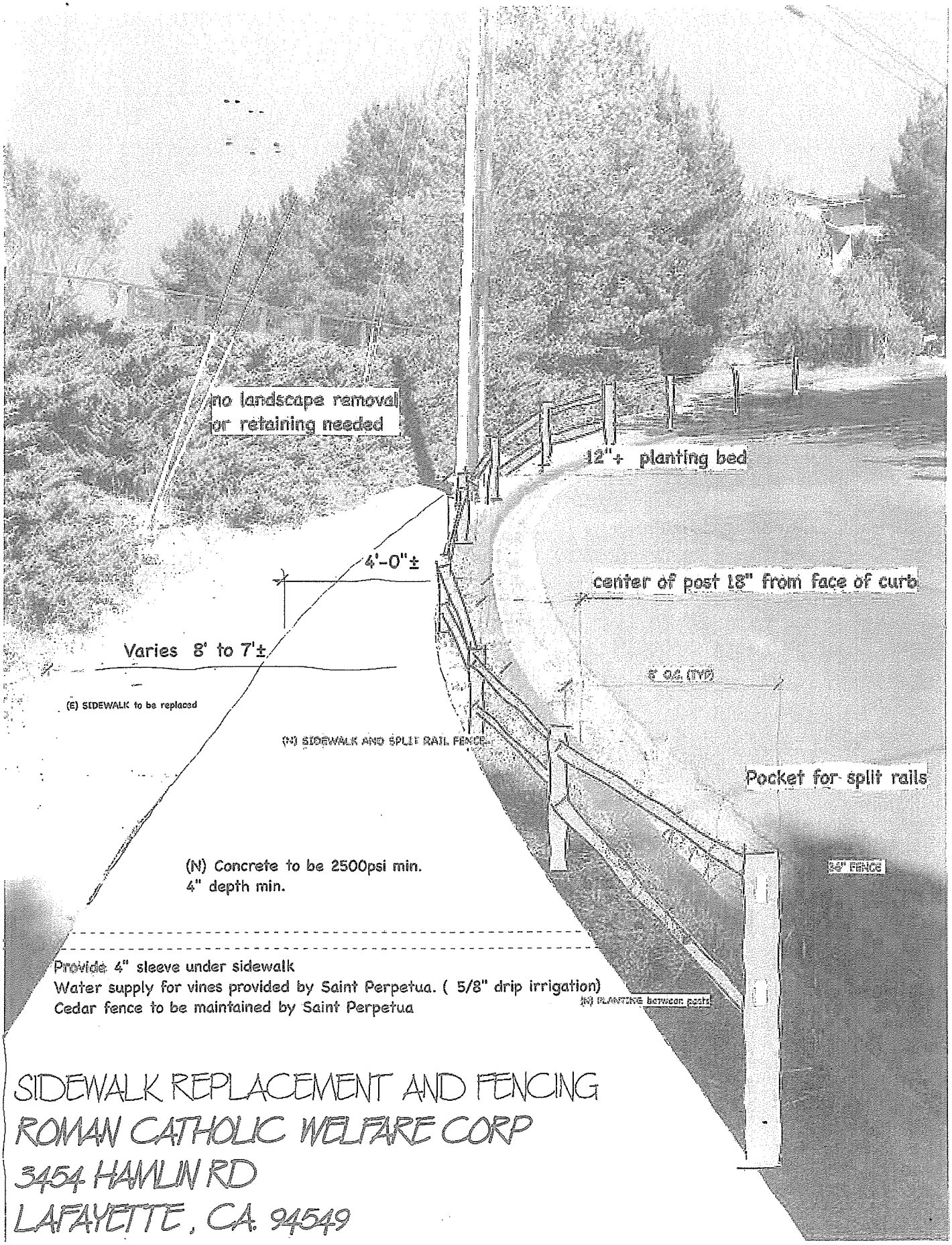



Figure 1: Plan View of Sidewalk Replacement and Fencing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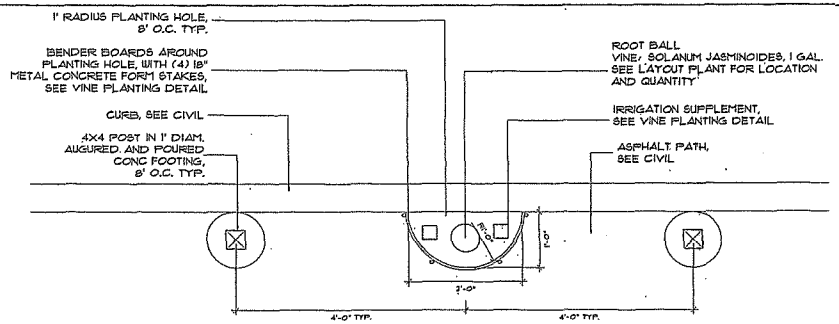
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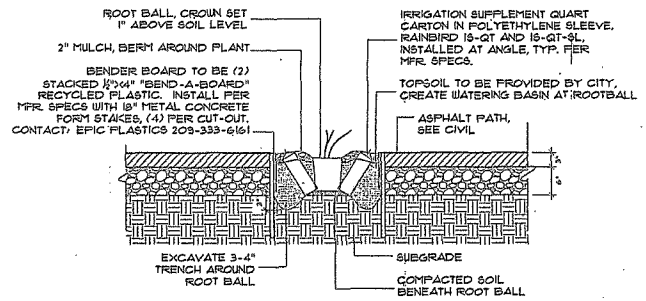
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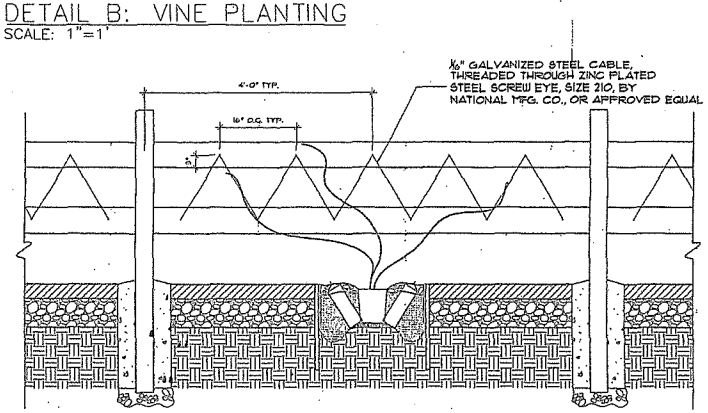
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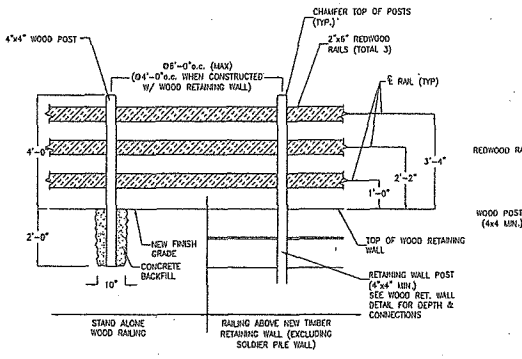
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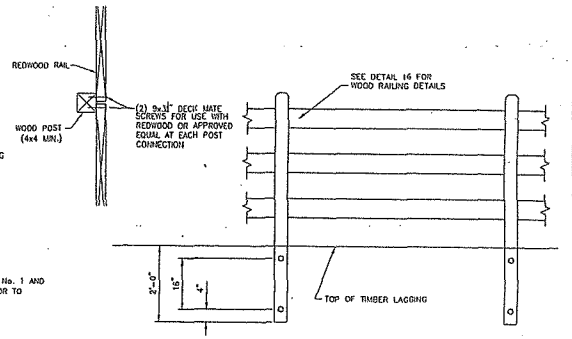
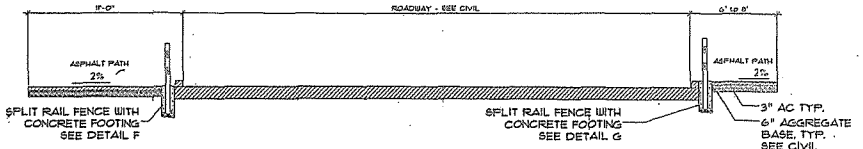
RAILING ABOVE NEW TIMBER RETAINING WALL (EXCLUDING SOLDIER PILE WALL)

NOTE: ALL WOOD FENCE AND RAILING COMPONENTS SHALL BE REDWOOD No. 1 AND TREATED WITH "CABOTS CLEAR SOLUTION" CLEAR WATERSEALER PRIOR TO FABRICATION

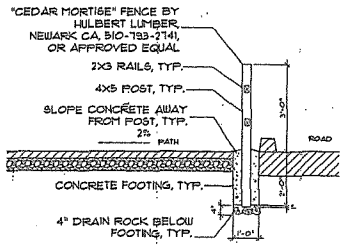

REDWOOD RAIL
WOOD POST (4x4 MIN.)
(2) 9x3" DECK MATE SCREWS FOR USE WITH REDWOOD OR APPROVED EQUAL AT EACH POST CONNECTION
SEE DETAIL 16 FOR WOOD RAILING DETAILS
3'-0"
16"
4"
TOP OF TIMBER LAGGING

16 WOOD RAILING & WOOD FENCE
NOT TO SCALE

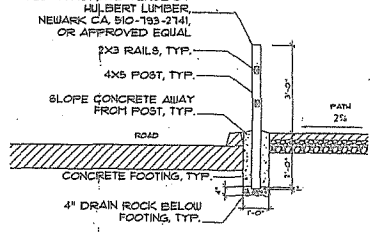
RAILING CONNECTION DETAIL
NO SCALE




## DETAIL E: STREET CROSS-SECTION
SCALE: 1/4"=1'




## DETAIL F: FENCE DETAIL
SCALE: 1/2"=1'




## DETAIL G: FENCE DETAIL
SCALE: 1/2"=1'

02/16/05

| DATE | MARK | REVISION | INIT. |
|---|---|---|---|
| | | | |

Designed by: JH/CD
Drawn by: JH/CD
Checked by: JH
Reviewed by: SS
Date: February 2005

Sign: _____ Date: _____

WOLFE MASON ASSOCIATES
LANDSCAPE ARCHITECTS RESTORATION SPECIALISTS
6373 Stoddard Avenue, Oakland, CA 94605
Phone 510.534.9100 Fax 510.534.9105
wolfemason.com

LAFAYETTE

REVIEWED BY:
CITY OF LAFAYETTE
Tony Coe, Engineering Services Manager — Date

CITY OF LAFAYETTE
PROJECT NO. 014-9653
MORAGA ROAD CORRIDOR IMPROVEMENTS PROJECT
CONTRA COSTA COUNTY — CALIFORNIA

MORAGA ROAD
FENCE DETAILS
PLAN / PROFILE
SCALE: _____ SHEET LS-1 No. 40 of 44

Figure 3: Fence and Planting Details

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Contra Costa }

On 9-2-08 (Date) before me, Joanne Lee Robbins, notary (Here Insert Name and Title of the Officer)

personally appeared John Kasper (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Joanne Lee Robbins (Signature of Notary Public)

ESI1 JOANNE LEE ROBBINS COMM. #1551436 Notary Public-California CONTRA COSTA COUNTY My Comm. Exp. Feb 10, 2009 ESI1

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

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Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

### Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
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